

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

CONVERGYS CORPORATION

and

HOPE GRANT, an individual

Cases 14-CA-075249
And 14-CA-083936

**CONVERGYS CORPORATION'S MEMORANDUM IN SUPPORT OF
CHARGING PARTY'S REQUEST TO WITHDRAW ITS CHARGES AND
OPPOSITION TO THE GENERAL COUNSEL'S OPPOSITION TO
CHARGING PARTY'S WITHDRAWAL REQUEST**

Convergys Corporation (Respondent) files this Memorandum in Support of Charging Party's Request to Withdraw its Charges and Opposition to the General Counsel's Opposition to Charging Party's Withdrawal Request.

The General Counsel opposes Charging Party's request to withdraw its charges as part of a non-Board settlement agreement because the parties' agreement allegedly fails to address and remedy the alleged violation of Section 8(a)(1). In short, the General Counsel does not like the deal struck between the parties. But whether or not the General Counsel likes a settlement is not the standard by which a withdrawal request is reviewed. In *Independent Stave Co.*, 287 NLRB 740 (1987), the Board acknowledged its policy of encouraging settlement agreements and identified four historical factors it considers when evaluating non-Board settlements. Moreover, the Division of Operations-Management Memorandum OM 07-27 ("OM Memo") lists the

factors to consider when a Regional Office is reviewing a withdrawal request.¹ These combined factors support the Board's approval of the Charging Party's withdrawal request.

I. The Parties' Settlement Complies with the Factors Identified in *Independent Stave*.

The four historical factors identified by the Board regarding its treatment of non-Board settlements include: (1) whether the settlement is reasonable in light of the alleged violation, the risks of litigation, and the stage of litigation; (2) whether the charging party, the respondent, and the discriminatees agreed to be bound, and the General Counsel's position regarding the settlement; (3) whether fraud, coercion, or duress were present; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

The settlement agreement is reasonable and acceptable pursuant to these concerns. The parties negotiated the settlement agreement with the assistance of a court-appointed mediator and it was approved by a Federal District Judge—who declined to enforce Respondent's class and collective action waiver. There is no evidence of fraud, coercion, duress, or any allegation of a history of violations of the Act. The very nature of the agreement itself should neutralize any concern by the General Counsel because the settlement agreement itself is negotiated on behalf of a class.

¹ Although an Operations-Management Memorandum has no binding effect on the Board, Memorandum OM 07-27 was issued consistent with the Board decision in *Independent Stave Co.*, 287 NLRB 740 (1987) and should be given due consideration.

The Board need not second guess the nature of the agreement and should not feel compelled from a public interest standpoint to make a determination on an issue already decided in federal court and approved by a federal judge.

II. The Parties' Settlement Does Not Waive the Right to File NLRB Charges on Future Unfair Labor Practices.

As Charging Party notes in her statement in support of her withdrawal request, the parties' settlement contains no waiver, release or restriction on any person's right to file future unfair labor practice charges or waive or release any other right to pursue claims based on any future events. In fact, the settlement's release by class members is expressly limited to claims for wages accrued over a specified time period. Other releases in the settlement are limited to claims in existence as of the date of the settlement. And the settlement expressly states that "[n]othing in this Agreement prohibits Plaintiff from participating in any National Labor Relations Board ("NLRB") proceeding."

III. The Parties' Settlement Does Not Waive the Right to Assist Other Employees in the Investigation and Trial of NLRB Cases.

As stated above, the settlement affirmatively provides "[n]othing in this Agreement prohibits Plaintiff from participating in any National Labor Relations Board ("NLRB") proceeding." Nothing in the settlement prohibits anyone from participating in any Board proceeding in any way.

IV. The Parties' Settlement Does Not Include Objectionable Confidential Clauses or Clauses that Prohibit an Employee from Engaging in Non-Defamatory Talk About the Employer.

As Charging Party points out, the restriction on communication in the settlement agreement is less restrictive than the standard terms found acceptable in the OM

Memo. Specifically, the OM Memo finds restrictions that limit disclosure to only a person's family, attorney and financial advisor are normally acceptable. Here, Charging Party is only restricted from disclosing the settlement agreement's terms to Respondent's employees and former employees who are not entitled to receive the class notice.

V. The Parties' Settlement Does Not Include Penalties for Breach of Agreement That Require the Return of Backpay and Assessment of Costs or Attorney's Fees.

The settlement provides no penalties for breach that require the return of backpay, any assessment of costs, or attorneys' fees.

VI. The Parties' Settlement Appropriately Addresses Tax Payments Related to the Settlement Payments.

As Charging Party thoroughly explained in her withdrawal request, the settlement agreement terms fully comply with the tax treatment requirements of the OM Memo. Those portions of the payments that relate to wages had payroll taxes withheld, and those settlement payments not related to wages did not have payroll taxes withheld. Respondent paid its share of all payroll taxes withheld, and claimants were responsible for paying any other taxes attributable to their individual payments.

VII. Conclusion.

The OM Memo states that approving non-Board adjustments often present difficult choices for a Region, *particularly* if it includes the issues discussed in the five factors above. This is not a difficult choice. This case does not contravene any of the OM Memo's five factors discussed above and it comports with the considerations identified in *Independent Stave*. Approval of this withdrawal request is consistent with the General Counsel's own guidance as set forth in the OM Memo. It will effectuate the

purposes and policies of the Act to approve this withdrawal request which was negotiated with a Charging Party represented by fully competent counsel. The request for withdrawal should be approved, and the General Counsel's Opposition denied.

CONVERGYS CORPORATION

A handwritten signature in black ink, appearing to read "Raymond D. Neusch", written over a horizontal line.

Raymond D. Neusch

Julie E. Byrne

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CERTIFICATE OF SERVICE

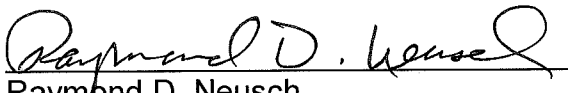
Pursuant to the National Labor Relations Board's Rules and Regulations, Section 102.114, a true and correct copy of the foregoing was e-filed with the Executive Secretary and served via electronic mail on this 12th day of November 2014 on the following parties:

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